COMMITTEE: **Communications, Financial Services & Interstate Commerce**

POLICY: **Twenty-First Century Communications**

TYPE OF POLICY: **DRAFT – Policy Statement**

At the start of the Twenty-first Century, advanced communications services and information technology are the economic forces that are ensuring the continued financial health and stability of our country and our states. The information age is no longer merely a segment of economic growth but must be addressed as the underpinning of the entire marketplace. There is hardly an industry or trade that does not depend in some way on communications services and the infrastructure that provides vital information at the push of a button or the command of the voice.

THE STATE OF COMMUNICATIONS

Innovation and convergence of existing technologies are radically expanding communications services, blurring distinction between telephone and Internet services; between cable, wireless and satellite; between long distance and local service; and between telephone and other forms of communications.

The primary goal of the federal Telecommunications Act of 1996 was to open telecommunications markets to competition. ~~Eleven~~ Fifteen years later competition exists because of many factors, including increased innovation and consumer access to wireless services and the ability of consumers to communicate over the Internet through Instant Messaging, e-Mail, Voice over Internet Protocol (VOIP), Internet Protocol Television (IPTV) and satellite communications. The 1996 Act along with similar efforts at the state level allowed for much industry self-regulation that has fostered these competitive forces while providing consumers with communications choices.

~~In 2007, according to~~ According to the 2010 Trends in Telephone Service Report, released by the Federal Communications Commission (FCC), in 2008 ~~111~~ 113.5 million households had telephone service; this represents ~~94.6~~ 96 percent of the total

households in the United States. In a 2011 analysis of local telephone competition, the FCC also reported that in 2009 incumbent local exchange carriers (ILECs) accounted for ~~142.2~~ 107.4 million access lines compared to ~~29.8~~ 45.7 million access lines provided by ~~competitive local exchange carriers (CLECs)~~ Non-ILECs. ~~At the same time there were over 233~~ Today there are over 300 million wireless telephone subscribers, surpassing the total of all wireline access lines. Add to this to U.S. Census data for 2009 demonstrating that someone in nearly 77 percent of households accesses the Internet from home or some location ~~overview of competition, estimates from Bernstein Research that in 2007, 75 percent of households in America had internet access~~ enabling alternative communications such as e-Mail and Instant Messaging.

Many of these new technologies are capable of delivering communications services but do not fit within the definitions of the traditional regulatory framework for telecommunications. As a result similar services can be delivered via networks that are regulated and taxed differently, and for a growing number of technologies, these services are free of regulation and even taxation. This uneven governmental treatment, while not intentional, has led to competitive barriers, discouraged investment in infrastructure development, and delayed the roll out of advanced communications services by existing regulated telecommunications providers.

To ensure that government regulation of communications services, when such regulation is necessary to ensure competition, protect the interests of consumers and the needs of law enforcement agencies, is based on an even playing field between competitors of similar services, though possibly delivered by different technologies, the National Conference of State Legislatures calls upon the Congress and the Federal Communications Commission, in consultation with state legislatures and the providers of communications services, to review the current definitions of telecommunications and information services as defined in the Communications Act of 1934 and the Telecommunications Act of 1996 to ensure that all providers of communications services are treated similarly for purposes of government regulation and taxation.

The need to review and possibly re-define telecommunications and information services has been made more urgent by numerous federal court rulings since 1996, which have added confusion to what are telecommunications services by delivering several contradictory decisions. The definition of telecommunications and information services should not be decided in the courtroom but rather by the elected representatives of the people working cooperatively with regulators, industry providers and consumer groups.

NCSL would have concerns about a piecemeal approach by Congress in addressing regulatory and taxation issues with regard to a particular developing technology and not similar issues faced by other providers of communications. NCSL supports reconsideration of the 1996 Telecommunications Act to eliminate remaining barriers to competition, modernize outdated regulations that distort the market or results in government favoring one technology over another, and ensure a level playing field for all providers of communications services, while maintaining the basic right of interconnection that is fundamental to a competitive market

COMMUNICATIONS INFRASTRUCTURE

The United States communications infrastructure is the combined product of a wide range of service providers, including historically regulated common carriers, new entrants and operators of private networks. With proper attention given to infrastructure development, communications and information technology present boundless opportunities for America to lead the world throughout the 21st century. Communications services will achieve its fullest potential only if it allows every American, regardless of geographic location and economic status, the opportunity to realize the full benefits of the information age. Government policies that promote competition and reduce outdated layers of regulation, where markets are competitive are the key to reaching this full potential.

Government and industry, working cooperatively, must continue to provide our citizens, businesses and governments with the best communications infrastructure in the world. Our goal is the creation of affordable, easily accessible communications and information

networks serving the societal needs of a broad range of users and industries. To that end, government and industry should strive for a communications policy framework that promotes and ensures fair and open competition, removes obsolete barriers that result from outdated burdensome regulation and requirements, ensures similar government regulation for all technologies that provide similar services in markets that are competitive, encourages innovation and investment, and allows consumers and the marketplace to determine winners and losers not government regulation. As competitive markets alone may not be able to provide an advanced communications infrastructure to all citizens, institutions, and businesses, government should continue to encourage the availability of such an infrastructure to all.

While investments in communications infrastructure have received considerable national attention, the federal government must recognize that states have unique priorities that require state and regional specific solutions.

UNIVERSAL SERVICE FUND

Since its inception, the federal Universal Service Fund (USF) has sought to increase access to telecommunications services to historically underserved populations through contributions by all telecommunications providers. These contributions are typically passed onto telecommunications consumers through a monthly fee on their billing statement.

According to the most recent data from the FCC, of the ~~almost~~ over $7 billion annual budget of the federal USF, ~~64.1~~ 63 percent goes to the High Cost Fund, which finances telecommunications facilities in rural areas; ~~14~~ percent goes to the Low Income Fund, which finances carriers for customers who are in a means tested public assistance program; ~~21.6~~ 24.8 percent goes to Schools and Libraries Fund (E-Rate Program) which funds services to public schools and libraries; and, about ~~0.3~~ 0.7 percent goes to Rural Health Care Fund. In addition many states have established state Universal Service Funds, providing universal access solutions that remain unique to their respective states and constituents.

With well over two-thirds of the federal USF supporting access to basic telephony, and assessments on providers being raised almost every year by the Universal Service Administrative Company, concerns in Congress are growing about the future of the federal USF. In reforming the federal USF, NCSL would remind Congress that the USF is funded primarily by customers of telecommunications services and therefore the Congress needs to evaluate the ever growing burden these increasing fees are becoming to all Americans.

Congress, the Federal Communications Commission, state legislatures and state regulators should review and address the requirements and goals for universal service by adopting policies that promote universal mobility and universal competition.

As the FCC embarks to modernize the fund to hasten the deployment of high-speed Internet service nationwide, NCSL cautions that any ~~Any~~ reform of the federal Universal Service Fund should not impact or hinder innovation at the state level or interfere with the administration of state Universal Service Funds.

ADVANCED COMMUNICATION SERVICES

According to the 2010 Trends in Telephone Service Report, released by the Federal Communications Commission, the number of high-speed lines connecting to the Internet (exceeding 200 kilobits per second in one direction) increased by ~~52~~ 140 percent between June of 2005 and ~~June of 2006~~ December of 2008, resulting in a total of ~~64~~ 102 million lines in service in the United States. In addition, the FCC reported an increase in the number of advanced service lines connecting to the Internet (exceeding 200 kilobits per second in both directions) increased by ~~35~~ 137 percent between June of 2005 and ~~June of 2006~~ June 2008, resulting in a total of ~~50~~ 88.4 million lines in service in the United States.

The future expansion of access to advanced communications and broadband services will depend upon additional private investment and minimal government regulation. Any

regulation of communications and broadband services must be minimal and should not discriminate between communication providers or the technology used in delivering such services.

NCSL urges Congress to work with states in developing an integrated broadband strategy to ensure universal deployment and affordable access to every constituent, regardless of geography or economic status. NCSL supports the creation of a national advisory board, including state, federal and local policymakers, as well consumer and industry representatives, to develop principles to facilitate deployment of advanced broadband communications services.

NCSL urges the Federal Communications Commission, in conjunction with state, federal and local policymakers, to reevaluate the distinction between telecommunication and information services and gather additional information on the state of advanced broadband and communications services in the United States in light of the technological achievements made within the last decade.

MUNICIPAL BROADBAND NETWORKS

As states seek to expand access to broadband and work with the federal government to enhance deployment of broadband, Congress and the FCC must recognize and account for the principles of federalism and numerous decisions by the United States Supreme Court with regard to the relationship between the state and its political subdivisions. Most recently, in 2004, by a vote of 8-1 in Nixon v. Missouri Municipal League, the United States Supreme Court upheld the decision by the Missouri legislature forbidding the state's political subdivisions from offering telecommunications or Internet services.

Legislation has been introduced in Congress to preempt any state statute, rule or regulation that seeks to regulate, limit or prohibit the ability of municipalities and state created public agencies with regard to funding or establishing high speed Internet

networks, broadband and wireless technology known as WiFi. Such congressional action would violate the states' sovereignty over its own political subdivisions.

NCSL will oppose any effort to authorize or prohibit the establishment of municipal or state created public agencies broadband networks through congressional or federal regulatory action. Should Congress or the federal government take such action, NCSL will challenge the constitutionality of such action.

WIRELESS COMMUNICATIONS

According to the ~~Trends in Telephone Service Report~~ Mobile Wireless Competition Report, released by the FCC in 2011, the number of mobile telephone subscribers in the United States rose to ~~217.4~~ 274.3 million by ~~June 2006~~ the end of 2009 . The CTIA-The Wireless Association estimated that ~~by December 2006~~ in 2011, the number of subscribers had risen to ~~233~~ over 300 million.

The FCC reported that Americans increased their average monthly voice "minutes of use" ~~by 27 percent,~~ from ~~584~~ 623 minutes per subscriber in ~~2004~~ June of 2005, to ~~740~~ 696 minutes per subscriber in ~~2005~~ December 2009. CTIA reports that by ~~December 2006~~ 2010, the total wireless minutes of use exceeded ~~850 billion.~~ 2.2 trillion, while text messaging and multimedia (MMS) messages surpassed 2 trillion; and 57 billion respectively. ~~Text messaging, according to the FCC almost doubled between 2004 and 2005, going from 24.7 billion messages to 48.7 billion messages.~~

This unprecedented growth in the wireless industry is a tribute to the innovation by the private sector in the delivery and development of wireless communication services, and the minimal regulation imposed upon wireless service providers by government.

Since 1993, for the most part the regulation of the wireless industry has been the domain of the Federal Communications Commission. Efforts by a few states to impose some form of economic regulation have not survived court challenges. States,

however, continue to have authority to monitor wireless providers with regard to consumer protection issues.

In 2004, the Federal Communications Commission received over 29,000 complaints relating to wireless telecommunications services, including billing issues, early terminations fees and advertising issues.

As a result, the majority of the wireless industry has taken significant strides in addressing these concerns, in part by adopting a wireless Consumer Code, which includes:

- Disclose Rates and Terms of Service to Consumers;
- Make Available Maps Showing Where Service is Generally Available;
- Provide Contract Terms to Customers and Confirm Changes in Service ;
- Allow a Trial Period for New Service;
- Provide Specific Disclosure in Advertising;
- Separately Identify Carrier Charges from Taxes on Billing Statements;
- Provide Customers the Right to Terminate Service for Changes to Contract Terms;
- Provide Ready Access to Customer Service;
- Promptly Respond to Consumer Inquires and Complaints Received from Government Agencies; and
- Abide by Policies for Protection of Customer Privacy

In 2006, the Federal Communications Commission received over 17,000 complaints relating to wireless telecommunications services, including billing issues, early terminations fees and advertising issues. This amounted to almost 11 out of every 1 million wireless customers or 0.00001 percent of all wireless subscribers. The wireless industry recently updated the Consumer Code in January 2011 to include provisions for wireless data plans and prepaid products. While the wireless industry through self-regulation has been successful in significantly reducing the number of consumer complaints, NCSL continues to support the ability of state government to protect the

interests of wireless consumers. However, in carrying out its consumer protection functions government must acknowledge the interstate nature of the wireless industry. Specifically targeted government requirements such as type size, language or formats of billing statements that may differ from jurisdiction to jurisdiction while may be well meaning, will hinder the seamless provision of these services, resulting in confusion and increased costs for all customers especially for those that are not residents of the state that has taken such action.

NCSL urges state and federal policy makers to work together to ensure that industry targeted consumer protections can be applied within a national framework that ensures the continued ability of the state attorneys general to enforce such consumer protections.

While states recognize the need for prepaid wireless phones, especially to those who may not be able to afford the costs of a wireless service contract, state legislatures and law enforcement agencies are concerned that such phones may also be used for illegal purposes. NCSL would encourage the wireless industry to continue working with state and local law enforcement agencies to ensure that prepaid wireless phones do not become a means to criminal or terrorist activity.

STREAMLINING AND COLLOCATION OF WIRELESS FACILITIES SITES

American consumers are depending more and more on wireless services and are demanding better reception and service. As wireless broadband becomes more accessible, consumers are becoming accustomed to using their laptops and handheld computers wherever they go. Americans want to be connected at all times.

This continually growing demand for access to wireless devices and services requires sufficient infrastructure. As the FCC's Eleventh Annual Report to Congress on the status of competition in the wireless industry stated:

> "By increasing network coverage and call handling capacity and improving network performance and capabilities, carriers' investments in network deployment and upgrades have the potential to result in service quality improvements that are perceptible to consumers, such as better voice quality, higher call-completion rates, fewer dropped calls and deadzones, additional calling features, more rapid data transmission, and advanced data applications. As noted in the Ninth Report, one of the principal ways carriers have improved network coverage and quality is by increasing the number of cell sites."

Increasing the number of cell sites for increased service capabilities can also mean opposition from the very same people that demand better cell reception. The refrain "not in my back yard," is often heard and some localities have used the siting process to make it very difficult to site new towers or even to co-locate antenna at existing wireless facility sites.

The federal Communications Act respects the authority of state and local governments over zoning and land use decisions for personal wireless facilities, but limits that authority to ensure that such local decision making does not become a barrier to entry for wireless providers. While the FCC, state and localities have worked cooperatively in the past, efforts to increase wireless facilities sites or to co-locate on existing sites are facing growing roadblocks by some localities.

Local jurisdictions are the creation of either state constitutions or law. Zoning and land use powers that these political subdivisions of the state exercise were granted to them over time by state legislatures. Therefore, any attempt by Congress to preempt current local zoning and rights-of-way authority is a preemption of state sovereignty.

To avoid federal preemption, state legislatures~~, such as California and Florida, have begun to~~ enact<u>ed</u> legislation to streamline the siting process and to enhance the use of collocation on existing wireless facilities. While NCSL rarely advocates the enactment

of legislation in state legislatures, NCSL has at times, when states are facing a serious threat of federal preemption, urged state legislatures to take action.

The National Conference of State Legislatures, in order to preserve the states' sovereignty, endorses state action to enhance the use of collocation of cell antenna and the streamlining of the current tower siting process. Collocation of antenna should not be subject to additional zoning, land-use or regulatory approval process above and beyond the initial process for siting the wireless facility. NCSL also believes that government should not levy discriminatory fees for the siting of wireless facilities or the application for collocation. Application fees levied on the siting as well as taxes on the wireless facility must not be higher than fees or taxes applied to other general business.

STATE FEDERAL PARTNERSHIP IN TELECOMMUNICATIONS COMPETITION

State legislatures and state regulators have been at the forefront of deregulation of the telecommunications industry, removing barriers to competition in local markets and advocating the infrastructure for the delivery of advanced telecommunications. State legislators recognize that deregulation and competition are among the means to reach the goals of advanced infrastructure development, universal service, expanded consumer choice, availability of services and cost effectiveness for our constituents.

The National Conference of State Legislatures through its policy process has supported the sovereign rights and responsibilities of states to regulate intrastate telecommunications. This principle has guided NCSL's position with regard to Congressional action to deregulate and provide for competition in telecommunications.

In enacting the Telecommunications Act of 1996, NCSL believes that the Congress and the President acknowledged the rights and responsibilities of states to regulate intrastate telecommunications, using any and all of the local market entry mechanisms envisioned by Congress in the 1996 Act, including the resale of legacy networks, providing that states use such authority in a competitively neutral manner. We believe that states and the federal government should continue their joint partnership in sharing

regulatory responsibilities which will serve to protect consumers by ensuring the broadest possible consumer choice in each geographic and service market, provide for the appropriate level of universal service, promote effective competition in telecommunications by ensuring similar and minimal regulation for all providers in competitive markets, foster the development of a national infrastructure policy that encourages a positive impact on our nation's economic future.

While NCSL acknowledges the historic role of states as the primary regulator of intrastate telecommunications, state legislators also recognize that the historic distinctions between intrastate and interstate communications is fast becoming irrelevant in today's global marketplace. Some new services, such as Voice over Internet Protocol, involve integrated functionalities that cannot even be characterized as jurisdictional. As has been stated previously in this policy statement, NCSL calls upon the Congress and the FCC to partner with states in a national framework for communications policy that ensures minimal regulation but guarantees all Americans with a choice of mediums and service providers.

TAXATION OF COMMUNICATIONS SERVICES

With the blurring of boundaries and increased convergence and competition in telecommunications and other related services, the National Conference of State Legislatures supports the review, simplification and reform of communications tax policies at all levels of government in order to ensure a level playing field between telecommunications service providers, to enhance economic development, to avoid discrimination between new and existing providers and to relive the higher burden that discriminatory communications taxes have on low income Americans.

Taxation of communications services developed for a monopoly that no longer exists has adverse consequences on competition, the nation's communications infrastructure and the overall economic development ability of the state. For states to be competitive in the global economy, taxation of communications must be in line with general business taxation at all levels of government.

The taxation of communications services at rates substantially above those imposed upon general business taxes not only harms competition in the marketplace, but also negatively impacts low-income consumers.

Transactional taxes on communications services are regressive. The higher the tax, the more significant the burden on low-income households. As a result, the ability of low-income families to purchase additional services, such as high-speed broadband and access to premium service packages becomes even more out of reach, thus serving to expand the digital divide.

Transaction taxes and fees imposed on communications services should be simplified and modernized to minimize confusion, remove distortion and eliminate discrimination regarding the taxability of telecommunications services. The National Conference of State Legislatures encourages elected policymakers at all levels of government to work together to simplify, reform and modernize communications taxes based upon the following principles:

1) **Tax Efficiency**: taxes and fees imposed on communications services should be substantially simplified and modernized to minimize confusion and ease the burden of administration on taxpayers and governments.
2) **Competitive Neutrality**: transaction taxes and fees imposed on communications services should be applied uniformly and in a competitively neutral manner upon all providers of communications and similar services, without regard to the historic classification or regulatory treatment of the entity.
3) **Tax Equity**: Under a uniform, competitively neutral system, industry-specific communications taxes are no longer justified, except for fees needed for communications services such as 911 and universal service.
4) **State Sovereignty:** Other than the prohibition of taxes on internet access, NCSL will continue to oppose any federal action or oversight role which preempts the sovereign and Constitutional right of the states to determine their own tax policies in all areas, including communications services.